

LESSER PRAIRIE CHICKEN NATIONAL HABITAT  
PRESERVATION AREA ACT OF 2008

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MAY 13, 2008.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. RAHALL, from the Committee on Natural Resources,  
submitted the following

R E P O R T

[To accompany H.R. 3930]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3930) to provide for a land exchange involving State land and Bureau of Land Management land in Chavez and Dona Ana Counties, New Mexico, and to establish the Lesser Prairie Chicken National Habitat Preservation Area, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Lesser Prairie Chicken National Habitat Preservation Area Act of 2008”.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) STATE LAND.—The term “State land” means the approximately 13,236 acres of State land, as depicted on the map.

(2) MAP.—The term “map” means the map titled “Lesser Prairie Chicken National Habitat Preservation Area and Land Exchange” and dated April 30, 2008.

(3) FEDERAL LAND.—The term “Federal land” means the land administered by the Secretary consisting of approximately 7,718 acres as depicted on the map.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(5) STATE.—The term “State” means the State of New Mexico.

(6) COUNTY.—The term “County” means the County of Chaves.

(7) PRESERVATION AREA.—The term “Preservation Area” means the Lesser Prairie Chicken National Habitat Preservation Area.

**SEC. 3. LAND EXCHANGE.**

(a) IN GENERAL.—The Secretary may convey to the State all right, title, and interest of the United States in and to the Federal land.

(b) **CONSIDERATION.**—As consideration for the conveyance of the Federal land under subsection (a), the State shall convey to the United States all right, title, and interest of the State in and to the State land.

(c) **INTERESTS INCLUDED IN EXCHANGE.**—Subject to valid existing rights, the land exchange under this Act shall include the conveyance of all surface, subsurface, mineral, and water rights to the Federal land and State land.

(d) **COMPLIANCE WITH FEDERAL LAND POLICY AND MANAGEMENT ACT.**—The Secretary shall carry out the land exchange under this Act in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) and other applicable laws.

(e) **NO AMENDMENT TO MANAGEMENT PLAN REQUIRED.**—The exchange of Federal land and State land shall not require an amendment to the Mimbres Resource Management Plan.

(f) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions for the land exchange as the Secretary considers to be appropriate to protect the interests of the United States.

#### **SEC. 4. LESSER PRAIRIE CHICKEN NATIONAL HABITAT PRESERVATION AREA.**

(a) **ESTABLISHMENT; PURPOSES.**—There is established in the County the Lesser Prairie Chicken National Habitat Preservation Area to protect, conserve, and enhance habitat for the Lesser Prairie Chicken.

(b) **BOUNDARIES.**—The Preservation Area shall consist of approximately 28,168 acres of public land and 9,402 acres of land acquired under section 3 of this Act, as generally depicted on the map.

(c) **MAPS AND LEGAL DESCRIPTION.**—

(1) **IN GENERAL.**—Not later than 30 days after the date of the enactment of this Act, the Secretary shall submit to Congress a map and legal description of the Preservation Area.

(2) **FORCE AND EFFECT.**—The map and legal description submitted under paragraph (1) shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in the map and legal description.

(3) **PUBLIC AVAILABILITY.**—Copies of the map and legal description submitted under paragraph (1) shall be on file and available for public inspection in—

- (A) the Office of the Director of the Bureau of Land Management;
- (B) the Office of the State Director;
- (C) the Office of the Pecos District Manager of the Bureau of Land Management; and
- (D) the Office of the County Clerk in Roswell, New Mexico.

#### **SEC. 5. MANAGEMENT OF THE PRESERVATION AREA.**

(a) **IN GENERAL.**—The Secretary shall manage the Preservation Area—

(1) in a manner that protects, conserves, and enhances the habitat for the Lesser Prairie Chicken; and

(2) in accordance with—

- (A) this Act;
- (B) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and
- (C) any other applicable laws.

(b) **USES.**—

(1) **IN GENERAL.**—The Secretary shall allow only uses of the Preservation Area that the Secretary determines will further the purposes for which the Preservation Area is established.

(2) **USE OF MOTORIZED VEHICLES.**—Except as needed for administrative purposes or to respond to an emergency, the use of motorized vehicles or mechanized transport in the Preservation Area shall be allowed only on roads and trails designated for vehicular use under the management plan so long as such use is in conformance with the purposes of this Act.

(c) **WITHDRAWALS.**—Subject to valid existing rights, all land managed by the Bureau of Land Management within the Preservation Area and any land and interests in land acquired for the Preservation Area by the United States after the date of the enactment of this Act are withdrawn from—

- (1) all forms of entry, appropriation, or disposal under the public land laws;
- (2) location, entry, and patent under the mining laws; and
- (3) disposal under the mineral leasing, mineral materials, and geothermal leasing laws.

(d) **HUNTING AND TRAPPING.**—

(1) **IN GENERAL.**—Subject to paragraph (2), hunting and trapping shall be allowed in the Preservation Area to the extent consistent with the protection and conservation of the Lesser Prairie Chicken.

## (2) LIMITATIONS.—

(A) REGULATIONS.—The Secretary may designate by regulation areas in which, and establish periods during which, for reasons of public safety, administration, or compliance with applicable laws, no hunting or trapping will be permitted in the Preservation Area.

(B) CONSULTATION.—Except in emergencies, the Secretary shall consult with the appropriate State agency before promulgating regulations under subparagraph (A) that close a portion of the Preservation Area to hunting and trapping.

(e) GRAZING.—The Secretary may allow grazing solely for the purpose of vegetative management to enhance Lesser Prairie Chicken habitat.

(f) ACTIVITIES OUTSIDE PRESERVATION AREA.—The fact that an activity or use of land is not permitted on land within the Preservation Area shall not preclude the activity or use outside the boundary of the Preservation Area or on private land within the Preservation Area, consistent with other applicable law.

## (g) ACQUISITION OF LAND.—

(1) IN GENERAL.—The Secretary may acquire land in the Preservation Area only—

(A) from a willing seller; and

(B) through purchase, exchange, or donation.

(2) MANAGEMENT.—Land acquired under paragraph (1) shall be managed as part of the Preservation Area in accordance with this Act.

(h) INTERPRETATIVE SITES.—The Secretary may establish sites in the Preservation Area to permit the interpretation of the historical, cultural, scientific, archaeological, natural, and education resources of the Preservation Area.

**SEC. 6. MANAGEMENT PLAN.**

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall develop a comprehensive plan for the long-range protection and management of the Preservation Area.

(b) CONTENTS.—The management plan shall—

(1) describe the appropriate uses and management of the Preservation Area in accordance with—

(A) this Act;

(B) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and

(C) other applicable laws;

(2) incorporate, as appropriate, decisions in any other management or activity plan for the land within or adjacent to the Preservation Area; and

(3) take into consideration—

(A) any information developed in studies of the land within or adjacent to the Preservation Area; and

(B) the historical involvement of the local community in the interpretation and protection of the resources of the Preservation Area.

**Amend the title so as to read:**

A bill to provide for a land exchange involving State land and Bureau of Land Management land in Chaves and Dona Ana Counties, New Mexico, and to establish the Lesser Prairie Chicken National Habitat Preservation Area, and for other purposes.

**PURPOSE OF THE BILL**

The purpose of H.R. 3930 is to provide for a land exchange involving State of New Mexico land and Bureau of Land Management land in Chaves and Dona Ana Counties, New Mexico, and to establish the Lesser Prairie Chicken National Habitat Preservation Area, and for other purposes.

**BACKGROUND AND NEED FOR LEGISLATION**

The Lesser Prairie Chicken is a grassland-nesting bird whose range once consisted of the dry, short-grass prairies of Kansas, Colorado, Oklahoma, New Mexico, and Texas. Once abundant throughout the region, a decline in habitat quality due to herbicide use, energy and mineral development, and excessive grazing is significantly affecting populations of the bird. A long-term drought in the

West has put even further stress on the remaining populations. It is estimated that the occupied range of the Lesser Prairie Chicken has been reduced by more than 90 percent. The U.S. Fish and Wildlife Service now considers the Lesser Prairie Chicken to be a candidate species under the Endangered Species Act.

The Sand Dune Lizard is a small reptile that is specialized to live only in what is known as the “sand dune blow-out, shinnery oak” habitat, which is unique to southeastern New Mexico and a few remaining areas of West Texas, and which is found within the proposed Preservation Area. Habitat destruction due to oil and gas development and overgrazing, as well as the use of herbicides to remove the shinnery oak, has resulted in the sand dune lizard being listed as a candidate species under the Endangered Species Act.

H.R. 3930, as amended, would provide for the exchange of state of New Mexico land and federal land administered by the Bureau of Land Management (BLM) in Chavez and Dona Ana counties to establish the Lesser Prairie Chicken National Habitat Preservation Area for the purpose of protecting, conserving and enhancing habitat primarily for the lesser prairie chicken, but also for the sand dune lizard. The bill will also provide for the management of the Preservation Area. This National Habitat Preservation Area would be the first of its kind.

#### COMMITTEE ACTION

H.R. 3930 was introduced on October 23, 2007 by Representative Steve Pearce (R–NM). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on National Parks, Forests and Public Lands. On April 24, 2008, the Subcommittee held a hearing on the bill, during which a representative from the Interior Department testified in support of the land exchange because it would consolidate federal ownership and management of habitat for the Lesser Prairie Chicken and the Sand Dune Lizard. However, the administration testified that technical changes were needed, as well as assurance that the acreage on the map of the area was current.

On April 30, 2008, the full Natural Resources Committee met to consider the bill. The Subcommittee was discharged from further consideration of H.R. 3930. Representative Steve Pearce (R–NM) offered an amendment in the nature of a substitute. The amendment included technical changes addressing the Interior Department’s concerns. The Pearce amendment was agreed to by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

#### SECTION–BY–SECTION ANALYSIS

##### *Section 1. Short title*

Section 1 provides that this Act may be cited as the “Lesser Prairie Chicken National Habitat Preservation Area Act of 2008.”

##### *Section 2. Definitions*

Section 2 defines the terms used in this Act.

### *Section 3. Land exchange*

Subsection (a) provides that the Secretary of the Interior may convey to the State of New Mexico all right, title and interest of the United States in and to the federal land defined in this Act and depicted on the map titled, “Lesser Prairie Chicken National Habitat Preservation Area and Land Exchange” and dated April 30, 2008.

Subsection (b) provides that as consideration for the conveyance of the federal land under subsection (a), the State of New Mexico shall convey to the United States all right, title and interest of the State in and to the state land defined in this Act and depicted on the April 30, 2008 map.

Subsection (c) provides that land exchanged under this Act shall include the conveyance of all surface, subsurface, mineral and water rights to the federal land and the state land, subject to valid existing rights.

Subsection (d) provides that the Secretary must carry out this land exchange in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) and other applicable laws.

Subsection (e) provides that this land exchange shall not require an amendment to the Mimbres Resource Management Plan.

Subsection (f) allows that the Secretary may require additional terms and conditions to apply to the land exchange if the Secretary deems them appropriate to protect the interests of the United States.

### *Section 4. Lesser Prairie Chicken National Habitat Preservation Area*

Subsection (a) establishes the Lesser Prairie Chicken National Habitat Preservation Area and provides that the purposes of the Preservation Area are to protect, conserve and enhance habitat for the Lesser Prairie Chicken.

Subsection (b) defines the boundaries of the Preservation Area as consisting of approximately 28,168 acres of public land and 9,402 acres of land acquired under section 3 of this Act.

Subsection (c) provides that (1) no later than 30 days after the date of enactment of this Act, the Secretary shall submit to Congress a map and legal description of the Preservation Area; and that, (2) this map and legal description shall have the same force and effect as if included in this Act (except that the Secretary may correct clerical and typographical errors). Subsection (c) also directs that copies of the map and legal description be on file and made available to the public at several locations specified in the bill.

### *Section 5. Management of the Preservation Area*

Subsection (a) provides that the Secretary shall manage the Preservation Area in a manner that protects, conserves and enhances the habitat for the Lesser Prairie Chicken; and also in accordance with this Act; the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and other applicable laws.

Subsection (b) provides for the uses of the Preservation Area and states that the Secretary shall only allow uses of the Preservation Area that the Secretary determines will further the purposes for which the Preservation Area is established. Paragraph (2) of this

subsection provides that, except for administrative purposes or to respond to an emergency, the use of motorized vehicles or mechanized transport in the Preservation Area shall be allowed only on roads and trails designated for vehicular use under the management plan, so long as such use is in conformance with the purposes of this Act.

Subsection (c) provides for withdrawal of the land within the Preservation Area. It directs that, subject to valid existing rights, all land managed by the Bureau of Land Management within the Preservation Area, and any land and interests in land acquired for the Preservation Area by the United States after the date of the enactment of this Act, will be withdrawn from all forms of entry, appropriation, or disposal under the public lands laws; location, entry, and patent under the mining laws; and disposal under the mineral leasing, mineral materials, and geothermal leasing laws.

Subsection (d) authorizes limited hunting and trapping within the Preservation Area. Paragraph (1) provides that, subject to the limitations contained in paragraph (2), hunting and trapping shall be allowed in the Preservation Area, to the extent consistent with the protection and conservation of the Lesser Prairie Chicken. Paragraph (2) defines these limitations by providing that the Secretary may designate, by regulation, areas within the Preservation Area where hunting or trapping is not permitted and may establish periods during which, for reasons of public safety, administration, or compliance with applicable laws, no hunting or trapping will be permitted. In carrying out such authorities, the Secretary shall consult with the appropriate state agency before promulgating regulations to close a portion of the Preservation Area to hunting and trapping, except in emergencies.

Subsection (e) provides that the Secretary may allow grazing for the sole purpose of vegetative management to enhance the Lesser Prairie Chicken habitat.

Subsection (f) states that the prohibition of an activity or use of land within the Preservation Area shall not preclude the activity or use outside the boundary of the Preservation Area or on private land within the Preservation Area, consistent with other applicable law.

Subsection (g) provides for the acquisition of land. Paragraph (1) states that the Secretary may acquire land in the Preservation Area only from a willing seller through purchase, exchange or donation. Paragraph (2) provides that the land acquired shall be managed as part of the Preservation Area in accordance with this Act.

Subsection (h) allows for interpretive sites. It provides that the Secretary may establish such sites in the Preservation Area to permit the interpretation of the historical, cultural, scientific, archeological, natural, and education resources of the Preservation Area.

#### *Section 6. Management plan*

Subsection (a) directs the Secretary to develop a comprehensive plan for the long-range protections and management of the Preservation Area within one year of the date of enactment of this Act.

Subsection (b) requires that the management plan shall describe the appropriate uses and management of the Preservation Area in accordance with this Act; the Federal Land Policy and Manage-

ment Act of 1976 (43 U.S.C. 1701 et seq.); and other applicable laws. It also requires that the management plan shall incorporate, as appropriate, decisions in any other management or activity plan for the land within or adjacent to the Preservation Area take into consideration any information developed in studies of the land within or adjacent to the Preservation Area as well as the historical involvement of the local community in the interpretation and protection of the resources of the Preservation Area.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3, of the Constitution of the United States grants Congress the authority to enact this bill.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to provide for a land exchange involving State of New Mexico land and Bureau of Land Management land in Chaves and Dona Ana Counties, New Mexico, and to establish the Lesser Prairie Chicken National Habitat Preservation Area.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

#### *H.R. 3930—Lesser Prairie Chicken National Habitat Preservation Area Act of 2008*

H.R. 3930 would establish the Lesser Prairie Chicken National Habitat Preservation Area on about 37,000 acres of land in New Mexico. Based on information provided by the Bureau of Land Management (BLM), which would manage the preservation area, CBO estimates that implementing H.R. 3930 would cost about \$800,000 over the next three years. We estimate that enacting the

legislation would have no significant effect on direct spending or revenues.

H.R. 3930 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. State and local governments could benefit from grants authorized by the bill.

Under H.R. 3930, BLM would convey to New Mexico about 7,700 acres of land within the state in exchange for about 13,000 acres of nearby state property. Most of the land to be conveyed by New Mexico would be added to existing BLM holdings of about 28,000 acres to form the new preservation area. In addition, BLM would be authorized to acquire private lands within the boundaries of the preservation area. All land within that area would be withdrawn, subject to valid existing rights, from programs to commercially develop public lands, except that grazing would be allowed in certain situations. Finally, BLM would prepare a comprehensive plan for the new preservation area and would develop signs and other exhibits to help interpret the area's historical and natural resources.

CBO estimates that BLM would spend about \$300,000 to acquire about 300 acres of private land for the preservation area over the next three years. We estimate that an additional \$500,000 would be spent for one-time planning, interpretation, and other activities to protect and develop resources within the new preservation area, including surveying and other activities related to the property exchange. Finally, we estimate that ongoing costs to manage newly acquired acreage within and near the area would be minimal.

For this estimate, CBO assumes that the properties to be exchanged would be determined by NPS to be roughly equal in value. Also, we expect that the federal acreage to be conveyed to New Mexico will generate no income over the next 10 years; therefore, offsetting receipts (a credit against direct spending) would not be affected by the bill.

The CBO staff contact for this estimate is Deborah Reis. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### EARMARK STATEMENT

H.R. 3930 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

#### CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.